

37 Am. Jur. 2d Fraud and Deceit § 69

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Fraud and Deceit

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IV. False Representations

B. Necessity that Representation Be of Fact; Opinions

2. Distinctions Between Statements of Fact and Opinion

§ 69. Form of statement

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The mere form in which a statement is made is not necessarily determinative as to whether it is a statement of fact or an expression of opinion. Thus, the mere fact that a statement takes the form of an expression of opinion is not always conclusive¹ but may be a relevant factor, among others, to consider.² A statement may be so expressed as to bind the person making it to its truth though it may be stated in the form of an opinion.³ A statement that is in form a mere opinion, or the conclusion of the speaker, may import that the speaker knows that facts exist that support the speaker's conclusion and that the speaker does not know of the existence of facts which, if known, would cast doubt upon it.⁴ Conversely, that a matter which necessarily rests in opinion is stated positively does not make it a statement of fact.⁵

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Footnotes

¹ *Wade v. Chase Manhattan Mortg. Corp.*, 994 F. Supp. 1369 (N.D. Ala. 1997), aff'd, 132 F.3d 1461 (11th Cir. 1997) (applying Alabama law); *Anderson v. Deloitte & Touche*, 56 Cal. App. 4th 1468, 66 Cal. Rptr. 2d 512 (1st Dist. 1997); *McEneaney v. Chestnut Hill Realty Corp.*, 38 Mass. App. Ct. 573, 650 N.E.2d 93 (1995).

² *Wade v. Chase Manhattan Mortg. Corp.*, 994 F. Supp. 1369 (N.D. Ala. 1997), aff'd, 132 F.3d 1461 (11th Cir. 1997) (applying Alabama law); *Fisher v. Davidhizar*, 2011 UT App 270, 263 P.3d 440 (Utah Ct. App. 2011).

³ *Gray v. Richmond Bicycle Co.*, 167 N.Y. 348, 60 N.E. 663 (1901); *Holcomb & Hoke Mfg. Co. v. Auto Interurban Co.*, 140 Wash. 581, 250 P. 34, 51 A.L.R. 39 (1926).

⁴ § 72.

⁵ *Fidelity & Casualty Co. of New York v. J.D. Pittman Tractor Co.*, 244 Ala. 354, 13 So. 2d 669 (1943).

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